

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Gabriel Paniza	Team: Team # 8	CCRB Case #: 200605714	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 05/04/2006 8:00 AM	Location of Incident: § 87(2)(b) [REDACTED]	Precinct: 44	18 Mo. SOL 11/4/2007	EO SOL 11/4/2007	
Date/Time CV Reported Thu, 05/04/2006 9:04 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 05/04/2006 9:04 AM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. CPT Dermot Shea	00000	899846	NARCB BX
2. LT Christop Fasano	00000	915693	NARCB BX

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Joseph Nicolosi	26208	930835	NARCB BX
2. DT3 Steven Cohan	07454	901333	NARCB BX

Officer(s)	Allegation	Investigator Recommendation
A.CPT Dermot Shea	Abuse: Cpt. Dermot Shea supervised the entry and search of § 87(2)(b) [REDACTED] Bronx, NY.	[REDACTED]
B.LT Christop Fasano	Abuse: Lt. Christopher Fasano threatened to notify Administration for Children's Services.	[REDACTED]

Synopsis

On May 4, 2006 at around 8AM, § 87(2)(b) was in her apartment, § 87(2)(b) in § 87(2)(b) in the Bronx, along with her nephew § 87(2)(b) who was sleeping in a rear bedroom. § 87(2)(b) suddenly noticed officers under the supervision of Cpt. Dermot Shea of Bronx Narcotics in her apartment (**allegation A**). An officer pointed a gun at § 87(2)(b) telling her to shut up. § 87(2)(b) was thrown on the floor and handcuffed, then brought to a dining area. Officers moved to the back of the apartment. § 87(2)(b) was in the bedroom when an officer came in pointing his gun at § 87(2)(b). § 87(2)(b) § 87(2)(b) was then thrown to the ground and handcuffed. He was also taken to the dining area as officers searched the apartment. Lt. Christopher Fasano of Bronx Narcotics spoke to § 87(2)(b) asking her if there was any contraband or weapons in the apartment. § 87(2)(b) alleged that Lt. Fasano also stated that if she did not tell officers where the drugs were they would take away her children (**allegation B**). Lt. Fasano gave § 87(2)(b) a copy of the warrant to sign, and after some more minutes of searching unsuccessfully officers left the apartment.

§ 87(2)(g)

Summary of Complaint

§ 87(2)(b) called the CCRB on May 4, 2006 by phone to place a complaint about the search of her sister § 87(2)(b)'s apartment by the police, a search she did not witness. § 87(2)(b) is a § 87(2)(b)-old Hispanic female, 5 feet, 136 pounds, with brown hair and eyes. § 87(2)(b) On the date of the incident EMS took § 87(2)(b) to § 87(2)(b) because of an attack of nerves. § 87(2)(b) made statements to EMS, to a doctor, and to a social worker at the hospital (encl. 5) about the incident. The CCRB spoke with § 87(2)(b) and her nephew § 87(2)(b) who were present in the apartment at the time of the search on May 8, 2006 (encl. 6). § 87(2)(b) was interviewed by the CCRB on May 10, 2006 (encl. 7) in Spanish. Any discrepancies are noted in the narrative.

On the morning of May 4, 2006 § 87(2)(b) was awake, sitting in her bed making phone calls. § 87(2)(b)'s bedroom door is very close to the front door of the apartment. Suddenly, § 87(2)(b) saw officers in her apartment, and one officer had a gun pointed at her as well as a light (**allegation A**). He was behind a shield. § 87(2)(b) stated that she knew the men to be police officers because of the protective shield that the officer had with him. She stated the officers were not displaying their shields. § 87(2)(b) put her hands up and asked what was going on. The officer pointing the gun at her and flashing the light in her eyes told her to shut up. The officer grabbed her right arm and threw her to the ground. Once on the ground she was handcuffed, and then grabbed by the right arm again and brought up to a dining area located right outside her room and next to the entrance of the apartment. She was sat down on a chair and was asked in English if there was anyone else in the apartment. An officer translated for her. She told them that § 87(2)(b) was in a room further down the hallway, and a group of officers moved down the hall.

§ 87(2)(b) estimated that there were seven officers involved. They were dressed in civilian clothing, some in jeans, one in shorts, and an officer who appeared to be the boss, PO1, was dressed formally, with dress pants (PO1 was identified by the investigation as Lt. Christopher Fasano). Some of the officers had bulletproof vests, others wore jackets. § 87(2)(b) said that due to the fear she felt, she could not really provide a good description of any of the officers. § 87(2)(b) was brought over to the dining area by the officers and they sat down next to her. Officers were going through her room at the time. After sitting in the dining area for between 5 to 10 minutes officers came and took § 87(2)(b) into the living room of the apartment and sat her down. § 87(2)(b) sat in the living room for almost an hour. She could not see exactly what the officers were doing at that time. Lt. Fasano came into the living room with another younger officer. Lt. Fasano began to ask her in English if she had children, and she told him she had a § 87(2)(b) year old daughter (named § 87(2)(b) and he asked her where the daughter went to school. As Lt. Fasano spoke, the young officer translated things for her. Lt. Fasano then asked where the drugs and weapons were. § 87(2)(b) asked, "What drugs, what weapons?" Lt. Fasano stated that if she did not tell them where the drugs and weapons were they would have to bring in dogs and that the officer would take away her child (**allegation B**). § 87(2)(b) made no mention of this statement by officers to personnel at § 87(2)(b), or in her initial telephonic statement to the CCRB. § 87(2)(b)

asked why they would take her daughter away. Lt. Fasano did not respond. She was taken back the dining room area and waited there as officers searched her home.

After some indeterminate time, officers took her back to the living room, where Lt. Fasano showed her some papers in English. Lt. Fasano told her it was a warrant signed by a judge, and that she had to sign it. In her statement to the social worker at § 87(2)(b) after the incident she stated that officers had not shown her a warrant. § 87(2)(b) did sign it after they took the handcuffs off, and was taken back to the dining room. Eventually all the officers left, and her family members came in. Once the officers were gone, her sisters § 87(2)(b) and § 87(2)(b) were there with her. Her sister § 87(2)(b) began to videotape the status of the apartment after the search (encl. 21). § 87(2)(b) was having problems, and her sister § 87(2)(b) called 911. § 87(2)(b) was transported to § 87(2)(b), where she was given a pill for her nerves.

Results of Investigation

Victim Statement

§ 87(2)(b) is a § 87(2)(b)-old Hispanic male, 5'9", 150 pounds, with black hair and brown eyes. § 87(2)(b) He made an initial phone statement on May 8, 2006 (encl. 6) He was interviewed by the CCRB on May 10, 2006 (encl. 8). The interview was conducted in Spanish. § 87(2)(b) is a nephew of § 87(2)(b) and has been staying in one of the bedrooms of the apartment for the last four months. On May 4th, he was awakened by noise outside of the officer breaking down the front door and heard § 87(2)(b) scream (**allegation A**). As he was about to go out the room to investigate, officers broke the door into his room and an officer was pointing a gun to his head and had a flashlight on his face. At that point he did not know who was pointing a gun at him and a flashlight. An officer placed a cuff on his left hand, and when that happened he asked what was going on. The officers told him that he did not need to know what was going on. The officers turned on the lights, which is when § 87(2)(b) notices the men were police officers. With one hand cuffed, the officers told § 87(2)(b) to put on a shirt and some pants. § 87(2)(b) got dressed, then an officer grabbed § 87(2)(b) by the left arm and threw him onto the ground, and once he was on the ground the officers finished handcuffing him.

The officers took him out of the room, and took him to the dining room area, where § 87(2)(b) was sitting down. The officers were dressed in civilian clothing. One officer had shorts and one officer who appeared to be a boss was wearing a shirt and tie, and dress pants. § 87(2)(b) knew this officer was a boss because as officers searched, they would come ask this officer what to do, and this officer would review what they did. The officers then came and took § 87(2)(b) to her room, and made some brief questions that § 87(2)(b) could not hear. They brought § 87(2)(b) back, and then they took § 87(2)(b) into § 87(2)(b)'s room. In § 87(2)(b)'s room a blond, blue eyed officer with a small beard, about 5'6" and chubby asked him in Spanish if he had ever been arrested, which he never had been. He was then asked where the drugs and the weapons were, and told he could make their job easier, and if he did not tell them they would search the whole place and bring in dogs. § 87(2)(b) told the officers to do whatever they needed, that they would find nothing. They took him back out to the dining room, while § 87(2)(b) was taken to the living room. The blond officer stayed with § 87(2)(b). § 87(2)(b) could not see what the officers were doing since he was sitting outside. § 87(2)(b) was separated from § 87(2)(b) for about half an hour. § 87(2)(b) returned, and they had taken her handcuff off for her to sign the warrant. They sat down § 87(2)(b) next to § 87(2)(b) who was still handcuffed at this point. The higher rank officers left, while the remaining officers kept searching for about half an hour. One officer asked another what he § 87(2)(b) was doing, and was told § 87(2)(b) was not doing anything, so they took the handcuffs off, and then all the officers left.

After the officers left, family members came into the apartment. An ambulance had to be called because § 87(2)(b)'s blood pressure was high. § 87(2)(b) noted that officers never showed him the search warrant. In his initial phone statement § 87(2)(b) stated that they did show him a warrant at the end of the search.

Videotape of § 87(2)(b)

§ 87(2)(b) provided to the CCRB videotape made by a family member on May 4, 2006 showing the condition of her apartment after the search (encl. 21). The video showed that the front lock was broken, and shows that furniture had been overturned, drawers removed and their contents strewn about, and a paper basket is shown overturned.

Officer Statements

PO Joseph Nicolosi

PO Joseph Nicolosi is a § 87(2)(b)-old white male, 6'1" tall, who weighs 250 pounds, with brown eyes, and brown hair. On May 4, 2006 PO Nicolosi was working on a field team assigned to execute search warrants and was posted to Bronx narcotics. PO Nicolosi was in plain clothes, working from 5:33AM to 2PM, and was specifically assigned as the arresting officer. In his memo book (encl. 9) PO Nicolosi wrote: "0700: 98 @ § 87(2)(b). 0900: Neg results/sw 2 voids." [Sic]. In the voided arrest report for § 87(2)(b) (encl. 10) PO Nicolosi wrote: "@ TPO search warrant § 87(2)(b) was executed. Negative results." [Sic] PO Nicolosi was interviewed on August 18, 2006 (encl. 11)

On May 4, 2006 PO Nicolosi was part of a field team executing a search warrant for the apartment. The officers were searching for Heroin. The warrant allowed for a forcible entry into the apartment. PO Nicolosi was stationed as the first man through. PO Nicolosi stated that once the door was forced, he entered the apartment carrying a shield and with his gun drawn. The rest of the team was behind PO Nicolosi. Captain Shea supervised the team from Bronx narcotics. Lt. Fasano from Bronx Narcotics was also present. After going through the front door, PO Nicolosi entered the first room on the left, the bedroom in which § 87(2)(b) was present. § 87(2)(b) was awake at the time he went into the bedroom. PO Nicolosi's shield was displayed, and the protective shield he carried said NYPD in front. PO Nicolosi stated that when he went into the bedroom, § 87(2)(b) got out of bed, so that the bed was between herself and PO Nicolosi. PO Nicolosi was pointing his gun at her and ordered her to the ground. § 87(2)(b) did not understand English very well, so there were a few moments of confusion, but finally § 87(2)(b) got on the ground, and she was handcuffed without resisting and with no force used. After this first bedroom was secured, the team, with PO Nicolosi still in the lead, moved further into the apartment, to the second bedroom. § 87(2)(b) was in the second bedroom, still in bed but awake. PO Nicolosi again entered behind his shield and pointing the gun at § 87(2)(b) and ordered him to the ground. PO Nicolosi ordered § 87(2)(b) to get on the ground, which § 87(2)(b) who understood English, did. § 87(2)(b) was also handcuffed. Both individuals were placed in a small dining room table in the first room in the apartment when coming through the front door. No more individuals were found in the apartment.

Officers then searched the apartment for drugs. PO Nicolosi stated that it was a very quick search because the apartment was very neat. The search turned out negative. PO Nicolosi stated that there was a Spanish-speaking officer who spoke with § 87(2)(b) but PO Nicolosi did not recall who that officer was. PO Nicolosi did not recall seeing Capt. Shea or Lt. Fasano speaking to § 87(2)(b) or § 87(2)(b). PO Nicolosi did not recall whether § 87(2)(b) or § 87(2)(b) were moved inside the apartment to different rooms. Officers got § 87(2)(b) and § 87(2)(b)'s information and then left the apartment. PO Nicolosi does not recall seeing any other building tenants in the hallway, or seeing any other civilians outside the apartment. Once leaving the apartment officers spoke to the superintendent, to tell him about the damage to the door and what could be done about it. Back at the precinct a post-execution plan was drawn up, and the arrests on § 87(2)(b) and § 87(2)(b) were voided.

Det. Steven Cohan

Det. Steven Cohan is a § 87(2)(b) year old white male, 6'2" tall, who weighs 185 pounds, with brown hair, a mustache, and blue eyes. On May 4, 2006 he was working for Bronx Narcotics from 9:27PM to 6PM. Det. Cohan was interviewed by the CCRB on November 28, 2006 (encl. 12).

Det. Cohan stated that he did not start work that day until after the warrant in question had already been executed. Det. Cohan stated that he had been the officer who went to a judge to ask him to issue the warrant for this apartment. According to Det. Cohan the officer who has the warrant issued is not responsible for the execution of this warrant. Det. Cohan stated that no one spoke to him about the results of executing the warrant and he did not ask anyone about the results. Det. Cohan did not know who executed the warrant besides PO Nicolosi.

Lt. Christopher Fasano

Lt. Christopher Fasano is a § 87(2)(b) year old white male, 5'11" tall, who weighs 250 pounds, with brown hair, and brown eyes. On May 4, 2006 Lt. Fasano was working as the commander of the 44 module in Bronx Narcotics. He was working from 6AM to 2PM and was in street clothes and a raid jacket

(NYPD windbreaker) and ridding in unmarked vehicles. That day he was supervising the execution of search warrants and was working with module 44-02. In his memo book Lt. Fasano (encl. 13) wrote: "0800 –search warrant executed @ § 87(2)(b) [Sic]. Lt. Fasano was interviewed by the CCRB on January 19, 2007 (encl. 14).

On May 4, 2006 at 8 AM Lt. Fasano went to execute a search warrant for heroin and heroin paraphernalia PO Nicolosi had for § 87(2)(b) warrant § 87(2)(b). Lt. Fasano recalled PO Nicolosi was there, along with Lt. Fasano's supervisor, Cpt. Shea. Lt. Fasano did not recall which other officers were there exactly, but he stated that Det. Olivera, Det. Johnson, Det. Ortiz, and Det. Guines are regular members of module 44-02. Lt. Fasano explained that a minimum of eight officers would be standard when executing a search warrant. Officers conducted a forcible entry as authorized by warrant § 87(2)(b) using a ram to break open the door, damaging the lock. The officers conducted a tactical entry behind a bunker, with their firearms drawn for officer safety. Lt. Fasano did not recall what position each officer had during the entry. They found a forty to fifty-year-old Hispanic female, § 87(2)(b) in the kitchen and a Hispanic male in a bedroom. Both individuals were secured by being handcuffed and placed in the kitchen area. These individuals spoke Spanish, and Spanish-speaking officers explained to the individuals the reason the officers had entered their apartment as Lt. Fasano had instructed them. Lt. Fasano did not recall which Spanish speaking officers did the speaking. Lt. Fasano asked the individuals if there were any drugs or guns in the house. Lt. Fasano stated that this is a standard question that he asked to find out what may be in the apartment for safety reasons. § 87(2)(b) was shown a copy of the search warrant and she told Lt. Fasano through translation that she understood the reason for the officer's entry and she signed a copy of the warrant. § 87(2)(b) was asked if there was any contraband in the apartment and she stated that she did not know of any contraband in the apartment. Lt. Fasano stated no officer including himself asked § 87(2)(b) if she had children. No officers including him ever told § 87(2)(b) that if she did not tell them where the drugs were her children would be taken away from her. Lt. Fasano did not recall how many bedrooms were in the apartment, recalling only the bedroom in which the Hispanic male was found. Lt. Fasano did not recall Capt. Shea questioning either of those individuals. He did not recall what Capt. Shea was wearing that day.

No contraband was found during the search. The two individuals were released. Lt. Fasano spoke to the building superintendent about the damage to the door and explained to the superintendent what the rights of the building owner were to seek redress from the City for the damage. The superintendent told Lt. Fasano that they would take care of the door.

Cpt. Dermot Shea

Captain Dermot Shea is a § 87(2)(b) year old white male, 6'3" tall, who weighs 210 pounds, has brown hair and blue-green eyes. On May 4, 2006 Cpt. Shea was the commander of group three of Bronx Borough Narcotics. Cpt. Shea was in plain clothes. Cpt. Shea did not recall his tour that day. On that date he was supervising the execution of two search warrants. Cpt. Shea would have driven to these locations in an unmarked vehicle. Cpt. Shea stated that he would have likely been wearing a raid jacket. He did not recall what he was wearing, and stated that someone wearing a suit or more formal clothes would not be standard. Cpt. Shea was interviewed by the CCRB on March 19, 2007 (encl. 15).

On May 4, 2006 Cpt. Shea and his team executed a search warrant at § 87(2)(b). Officer Nicolosi, either a police officer or detective at that time, was the only member of his team that Cpt. Shea recalled. Cpt. Shea stated that Lt. Fasano was part of his team at some point, but he did not recall if Lt. Fasano was present during the execution of this warrant. The warrant authorized a forcible entry into the apartment. Cpt. Shea did not recall who had the bunker as the team went in. Cpt. Shea did not recall if in this particular instance officers had their guns drawn, but he stated that that was standard training and he was sure the team did. He did not recall if Officer Nicolosi had his gun drawn. Inside the apartment officers found a male and female Hispanic. The male Hispanic was found inside a bedroom. Officers were searching for narcotics named in the warrant, but Cpt. Shea did not recall what narcotics were being searched for. Cpt. Shea stated that the individuals in the apartment would have been secured in the apartment, but did not remember them ever being brought out of the apartment. Cpt. Shea did not recall if the male and female were questioned, he assumed they were. He did not recall questioning either of these individuals himself. He did not recall whether these individuals spoke Spanish or English. Cpt. Shea did not remember telling the female that if she did not tell officers where the drugs were her children could be taken away from her. Cpt. Shea stated that he does not know if the woman had children, that he only

recalled seeing two individuals in the apartment. The search did not turn up anything, as far as Cpt. Shea knows. Cpt. Shea did not recall the length of the search.

Medical Records

Records from § 87(2)(b) from § 87(2)(b) (encl. 16) show that EMS brought § 87(2)(b) to the hospital with hypertension and anxiety. EMS found no physical trauma. The doctor who examined § 87(2)(b) also found no physical injuries and § 87(2)(b) was treated for her anxiety and elevated. § 87(2)(b) then saw a social worker that suggested she contact the CCRB.

Police Documents

The criminal court in Bronx county approved search warrant § 87(2)(b) on § 87(2)(b) (encl. 17). It authorized officers to search § 87(2)(b) for heroin and heroin paraphernalia. The warrant also gave police officers the authority to enter the premises without giving notice of their authority or purpose. PO Nicolosi wrote an arrest report for the voided arrest of § 87(2)(b) (encl. 10) on charges of § 87(2)(a) 160.50 which was approved by Lt. Fasano. The roll call for the 44th Precinct module of Bronx Narcotics for tour 2 on May 4, 2006 (encl. 18) showed that PO Nicolosi was working from 5:33AM to 2PM. Sgt. Rodriguez worked from 10:30AM to 7:05PM. Det. Cohan worked from 9:27AM to 6PM. The search warrant tracking report sent by Bronx Narcotics (encl. 19A) showed the module supervisor for the warrant as Sgt. Rodriguez, and the officer executing the warrant as Det. Cohan. Cpt. Shea appeared as the captain conferred with, and as the group commander. The search warrant tracking report modified after the search (encl. 19b) showed that the search was negative, that no arrests were made, and that the warrant had been served at 8:10AM. A request was made for the pre and post warrant execution plans (encl. 24) but these were not provided by the command.

Subject Officers CCRB Histories

Allegations of frisk and or search, vehicle stopped, and vehicle search were substantiated against Cpt. Dermot Shea in case 200306684. Cpt. Shea was issued instructions by the police department. Lt. Fasano has no substantiated CCRB allegations that have led to the imposition of discipline. (Encl. 2)

Civilian Conviction Histories

There are no recorded criminal convictions for § 87(2)(b) or § 87(2)(b) in New York City.

Conclusions and Recommendations

Officer Identification

According to all the officers interviewed Cpt. Shea was present for the execution of the search warrant, and he admitted that his duty that day was to supervise the execution of warrants. § 87(2)(g)

§ 87(2)(b) Lt. Fasano was another supervisor at the scene, and he admitted to speaking with § 87(2)(b) His statements match some of the statements that § 87(2)(b) attributed to PO1. No officer interviewed could recall Cpt. Shea speaking with § 87(2)(b) § 87(2)(g)

Undisputed Facts

On May 4, 2006 Officers forcibly entered § 87(2)(b) as authorized by warrant § 87(2)(b) They placed § 87(2)(b) and § 87(2)(b) in custody, handcuffed them, and then questioned them about possible contraband or guns in the apartment. Officers proceeded to search the apartment for possible drugs. § 87(2)(b) was shown a copy of the warrant, which she signed, and then officers left the apartment, having found nothing.

Disputed Facts

§ 87(2)(g)

Assessment of Evidence

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegations not pleaded

§ 87(2)(g)

Allegation A: Cpt. Dermot Shea supervised the entry and search of § 87(2)(b) Bronx, New York.

As stated in the officer identification section, this allegation is pleaded against Cpt. Shea because he was the ranking supervisor on scene during the execution of this search warrant.

Search warrant § 87(2)(b) was issued by the Bronx County criminal court on § 87(2)(b) and executed six days later, on May 4, 2006, within the ten days mandated on the warrant. Officers failed to announce themselves when they entered the apartment, which meant they had to enter forcibly. The warrant included a “no-knock” provision that gave officers the authority to enter the apartment unannounced. The front door of the apartment was damaged by this method of entry, but again, officers had the authority to do so. Officers also followed guidelines by showing their search warrant to § 87(2)(b) who subsequently signed the warrant.

The video provided by § 87(2)(b) showed overturned furniture and drawers that had been taken out, emptied, with their contents strewn about. According to Kamins (encl.), officers have the ability to search any part of a locale in which the items they are searching for could be found. The warrant

authorized officers to search for heroin and heroin paraphernalia that could certainly be hidden in drawers or under furniture.

§ 87(2)(b) and § 87(2)(b) both stated that officers entered and pointed guns at them, and then forced them to the ground, handcuffing them. According to police training materials officer may draw their weapons in times when they believe they may soon have to use deadly force, and included as an example is serving a warrant on individuals suspected of being drug traffickers. § 87(2)(g)

According to Kamins the ability of officers to detain individuals inside a location being searched is based on a series of considerations, including the reason for the search, the location being searched, and the relationship of those individuals found in the location to the location. As noted above, the court gave officers the authority to enter unannounced into this apartment, searching for drugs and drug paraphernalia. § 87(2)(g)

According to Kamins (encl.) courts have found it reasonable for officers to actually handcuff individuals inside a location prior to the search. § 87(2)(g)

Allegation B: Lt. Christopher Fasano threatened to notify Administration for Children's Services.

§ 87(2)(b) alleged that while she was being questioned a supervisory officer told her that if she did not tell them where the drugs were her children could be taken away. Lt. Fasano was identified as the officer to whom § 87(2)(b) was speaking. Lt. Fasano denied ever making such a statement. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: